

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Noa Street-Sachs	Team: Squad #8	CCRB Case #: 202000595	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 01/17/2020 6:30 PM	Location of Incident: South East Corner Howard Avenue and Sutter Avenue	Precinct: 73	18 Mo. SOL 7/17/2021	EO SOL 3/3/2022	
Date/Time CV Reported Thu, 01/23/2020 11:32 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/23/2020 11:32 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christian Lopez	24864	955083	077 PCT
2. POM Craig Mcgrath	26900	955165	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christian Lopez	Abuse: Police Officer Christian Lopez stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Craig Mcgrath	Abuse: Police Officer Craig McGrath stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Craig Mcgrath	Abuse: Police Officer Craig McGrath questioned § 87(2)(b)	
D.POM Christian Lopez	Abuse: Police Officer Christian Lopez frisked § 87(2)(b)	
E.POM Craig Mcgrath	Abuse: Police Officer Craig McGrath frisked § 87(2)(b)	
F.POM Christian Lopez	Abuse: Police Officer Christian Lopez searched § 87(2)(b)	
G.POM Craig Mcgrath	Discourtesy: Police Officer Craig McGrath spoke discourteously to § 87(2)(b)	

## Case Summary

On January 23, 2020, § 87(2)(b) filed this complaint with the CCRB over the phone.

On January 17, 2020, at approximately 6:30 p.m., in the vicinity of Howard Avenue and Sutter Avenue in Brooklyn, § 87(2)(b) drove for three or four blocks before PO Christian Lopez and PO Craig McGrath, both of the 77th Precinct, pulled him over for failing to signal while pulling out of a parked position (**Allegation A and B: Abuse of Authority**, § 87(2)(g) § 87(2)(b) was wearing tight jeans with brass knuckles in his right front pants pocket which caused a visible outline. PO Lopez informed § 87(2)(b) why he was pulled over and PO McGrath pointed to § 87(2)(b)'s pocket after which he asked what was in it (**Allegation C: Abuse of Authority**, § 87(2)(g) § 87(2)(b) exited his vehicle after which PO Lopez frisked and searched him and PO McGrath frisked him (**Allegation D, E, and F: Abuse of Authority**: § 87(2)(g) Brass knuckles were recovered. While back at the 77th Precinct stationhouse, PO McGrath used profanity when interacting with § 87(2)(b) (**Allegation G: Abuse of Authority**, § 87(2)(g)

§ 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b) (Board Review 01, Board Review 17). The agency is in possession of body worn camera footage pertaining to this case (Board Review 02).

## Findings and Recommendations

**Allegation (A) – Police Officer Christian Lopez stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (B) – Police Officer Craig McGrath stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that § 87(2)(b) failed to signal while pulling out of a parking spot and that PO Lopez and PO McGrath stopped his vehicle for this reason.

In § 87(2)(b)'s sworn statement, he stated that on January 17, 2020, at approximately 6:30 p.m., in the vicinity of Howard Avenue and Sutter Avenue in Brooklyn, he exited a subway station, walked for approximately one block, and then entered his vehicle. He drove for three or four blocks after which he saw flashing lights behind him and was pulled over. § 87(2)(b) acknowledged that he did not activate his signal when he pulled out of the parking spot. PO Lopez walked up to his window and requested § 87(2)(b)'s license and registration. § 87(2)(b) asked why he was being pulled over and PO Lopez told him it was because he failed to signal when pulling out of a parked position (Board Review 03).

PO Lopez testified that he and PO McGrath were stationary at a red light when they observed § 87(2)(b) walking by himself for about 30 seconds before entering his vehicle. The officers made a left and from approximately one hundred feet away, saw § 87(2)(b) fail to signal while leaving a parked position. At this point, the officers decided to initiate the car stop. There was no other reason for stopping § 87(2)(b)'s vehicle (Board Review 04).

PO McGrath testified that he did not observe § 87(2)(b) fail to signal, but rather that PO Lopez did. There was nothing that independently drew PO McGrath's attention to § 87(2)(b)'s car except for PO Lopez directing his attention to it. It was ultimately PO Lopez who made the decision to stop § 87(2)(b)'s vehicle (Board Review 05).

§ 87(2)(b) and PO Lopez's testimonies were consistent with one another regarding § 87(2)(b)'s failure to signal. NY CLS Vehicle and Traffic Law 1163 states that signaling is required in order to indicate intention to turn, change lanes, or start from a parked position (Board Review 06). Based on § 87(2)(b), § 87(2)(g)

**Allegation (C) – Police Officer Craig McGrath questioned § 87(2)(b)**

**Allegation (D) – Police Officer Christian Lopez frisked § 87(2)(b)**

**Allegation (E) – Police Officer Craig McGrath frisked § 87(2)(b)**

**Allegation (F) – Police Officer Christian Lopez searched § 87(2)(b)**

It is undisputed that § 87(2)(b) carried brass knuckles during the incident, the outline of which were visible through his pants. It is also undisputed that PO Lopez frisked and searched § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

In § 87(2)(b)'s sworn statement, § 87(2)(b) acknowledged that in his right front pants pocket, he carried cash and silver brass knuckles that were three to four inches. § 87(2)(b) acknowledged that one could see the outline of the contents of his pockets as his jeans were tight. While § 87(2)(b) sat in his vehicle, PO Lopez walked up and asked for his license and registration. PO McGrath stood on the front passenger side of the vehicle, pointed, and asked, "What's that in your pocket?" § 87(2)(b) laughed at him in response and said, "What you mean?" PO McGrath said, "What's that bulge in your pants?"

§ 87(2)(b) stepped out of the vehicle and PO Lopez placed his hands inside § 87(2)(b)'s pockets. PO Lopez asked § 87(2)(b) if he had anything sharp to which § 87(2)(b) said no. PO Lopez recovered brass knuckles from § 87(2)(b)'s pocket. PO Lopez patted down § 87(2)(b)'s waist but § 87(2)(b) could not remember if this was before or after the brass knuckles were recovered (Board Review 03).

PO Lopez testified that he approached the driver's side of § 87(2)(b)'s vehicle while PO McGrath stood on the opposite side. PO Lopez explained to § 87(2)(b) that he had failed to signal while coming out of a parked position. PO McGrath asked § 87(2)(b) "What's the bulge?" in reference to a bulge in § 87(2)(b)'s right pocket. Prior to asking about the bulge, PO McGrath did not make any statements to PO Lopez about any of his observations nor could PO Lopez observe the bulge at all from where he stood. § 87(2)(b) willingly pulled out brass knuckles. After this, PO Lopez asked § 87(2)(b) to step out of the vehicle and the brass knuckles were placed on the passenger side seat. At this point, § 87(2)(b) was under arrest.

PO Lopez frisked § 87(2)(b) by patting down the exterior of his pants in order to make sure § 87(2)(b) did not have any other weapons on him. Before frisking § 87(2)(b) PO Lopez could not recall what, if anything, he observed on § 87(2)(b)'s person. Nothing was yielded from this frisk. After § 87(2)(b) was frisked, § 87(2)(b) was then placed in handcuffs and PO Lopez searched § 87(2)(b) incident to a lawful arrest. PO Lopez went into both of § 87(2)(b)'s pockets and did not recover anything from this search. § 87(2)(b) was charged with criminal possession of a weapon (Board Review 04).

PO McGrath testified that within one minute of standing by § 87(2)(b)'s window and during the conversation about the car stop, PO McGrath observed a four to six inch bulge in the front right

pocket of § 87(2)(b)'s pants which PO McGrath believed to be brass knuckles because he could see the outline through § 87(2)(b)'s pants. PO McGrath saw the shape of knuckles with four circles attached to a bar. PO McGrath could not approximate how heavy the object seemed to be nor could he remember whether he observed this when the car window was up or down.

PO McGrath asked what this was after which § 87(2)(b) pulled out brass knuckles from his pocket and placed them on the front passenger seat of the vehicle. Besides the bulge, there were no other observations that PO McGrath made prior to asking the question about the bulge. After § 87(2)(b) placed the brass knuckles on the seat, PO McGrath asked § 87(2)(b) to step out of the car and arrested him.

When asked in the interview, PO McGrath stated he observed PO Lopez frisk § 87(2)(b) before § 87(2)(b) was arrested. PO McGrath did not remember where on § 87(2)(b)'s body PO Lopez made contact. After PO Lopez frisked § 87(2)(b), PO McGrath brought § 87(2)(b) to the trunk of the car and frisked him exclusively on his waist. When asked in the interview if § 87(2)(b) was under arrest at this point, PO McGrath said that § 87(2)(b) was detained but was not yet handcuffed. PO McGrath frisked § 87(2)(b) because § 87(2)(b) had reached to pull up his pants and PO McGrath wanted to make sure that there were no other weapons. § 87(2)(b) stated, "You can check me out if you want." PO McGrath did not observe anything on § 87(2)(b)'s person that seemed like it might be a weapon and prior to PO McGrath frisking § 87(2)(b)'s waist, there was nothing that § 87(2)(b) appeared to be carrying on his person (Board Review 05).

PO Lopez's BWC captures PO McGrath standing by the front passenger side of § 87(2)(b)'s car and at 2:57 minutes, asking, "What's that bulge in your right pocket?" while having his flashlight pointed toward § 87(2)(b). § 87(2)(b) reaches into his right jeans pocket and pulls out an object that is not entirely visible to the camera. PO McGrath tells him to place it on the front passenger's seat which § 87(2)(b) does. § 87(2)(b) is then asked to step out of his car. PO Lopez asks if § 87(2)(b) has anything else on him to which § 87(2)(b) says no. At 3:14 minutes, PO Lopez frisks § 87(2)(b) patting down his pants and his abdomen area. At 3:30 minutes, PO Lopez goes into § 87(2)(b)'s right jeans pocket. PO Lopez unzips a pocket of § 87(2)(b)'s jacket and says, "I'm just making sure you don't got nothing else on you." § 87(2)(b) then stands with his back to his trunk conversing with PO McGrath. PO Lopez handcuffs § 87(2)(b) (Board Review 02).

PO McGrath's BWC captures that after after PO Lopez frisks § 87(2)(b) at 4:12 minutes, PO McGrath seems to pat down § 87(2)(b)'s chest area (Board Review 02).

The investigation obtained the Complaint Report pertaining to this incident, complaint #2020-073-00043. The report indicated that PO Lopez observed § 87(2)(b) fail to signal from a parked position. Upon further investigation, § 87(2)(b) was found in possession of brass knuckles. § 87(2)(b), § 87(2)(a) 160.50

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According to Penal Code § 265.01., a person is guilty of criminal possession of a weapon in the fourth degree when: (1) He or she possesses any firearm, electronic dart gun, electronic stun gun, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, shiriken, or "Kung Fu star" (Board Review 19).

Per People v. De Bour, 40 N.Y.2d 210, the common-law right to inquire is activated by a founded suspicion that criminal activity is afoot and permits a policeman to interfere with a citizen to the extent necessary to gain explanatory information, but short of a forcible seizure (Board Review 08).

§ 87(2)(b), § 87(2)(g)

Per People v. Evans, 43 NY2d 160 (1977), the Court of Appeals of New York held that the justification of searches incident to lawful arrests “derive from the necessity to ensure the safety of the officer and to deprive the arrestee of any potential means of escape or of the ability to destroy evidence of a crime” (Board Review 09).

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

**Allegation (G) – Police Officer Craig McGrath spoke discourteously to § 87(2)(b)**

§ 87(2)(b) did not mention in his sworn statement that PO McGrath used profanity while interacting with him (Board Review 03).

PO McGrath testified that he did not remember whether he used profanity when interacting with § 87(2)(b) (Board Review 05).

PO McGrath's BWC captures PO McGrath entering the stationhouse after which he approaches § 87(2)(b) who is sitting in a chair facing the desk. At 00:45 seconds, PO McGrath tells § 87(2)(b) to stand up and while patting down his jacket, says, “Inventory all your property. All your money. Shit like that. Where’s your wallet? In the car still?” PO McGrath recovers papers and § 87(2)(b) says they are receipts (Board Review 02).

After being played this footage during his CCRB interview, PO McGrath identified the voice in the video as his own and confirmed he made the above-referenced statement. When asked in the interview what, if anything, was the reason he used profanity, PO McGrath asked if that constituted profanity and stated he believed one could say that on TV and it would not be redacted. PO

McGrath stated that there was no reason “for or against” him making this statement (Board Review 05).

Patrol Guide Procedure 200-02 requires that officers treat civilians with courtesy and respect (Board Review 18).

In DAO-DCT case number 2017-17005, the trial commissioner held “profane remarks, made during stressful situations or while an officer is trying to get a chaotic situation under control, are not misconduct” (Board Review 10).

It is undisputed that PO McGrath used profanity when interacting with § 87(2)(b). It has long § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 11).
- PO Lopez has been a member of service for seven years and has been a subject in six CCRB complaints and 14 allegations, of which one was substantiated. Case 201703855 involved a substantiated allegation of an improper summons against PO Lopez. The Board recommended formalized training and the NYPD imposed this discipline. § 87(2)(g)
- PO McGrath has been a member of service for seven years and has been a subject in 14 CCRB complaints and 49 allegations, of which none were substantiated. § 87(2)(g)

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint (Board Review 14).
- According to the New York City Office of the Comptroller, § 87(2)(b) had not filed a Notice of Claim regarding this incident as of February 13, 2020 (Board Review 15).

- § 87(2)(b)

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Squad No.: 8

Investigator: *Inv. Street-Sachs*      Inv. Street-Sachs      12/18/2020  
Signature      Print Title & Name      Date

Squad Leader: Ethan De Angelo      IM Ethan De Angelo      12/18/2020  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date